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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LAURACK D. BRAY,

Plaintiff and Appellant,

v.

DIANNE JACKSON,

Defendant and Respondent.

B295168

(Los Angeles County
Super. Ct. No. BC674704)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Gregory W. Alarcon, Judge. Affirmed.

Laurack D. Bray, in pro. per., for Plaintiff and Appellant.

Jeffer Mangels Butler & Mitchell and Susan Allison for
Defendant and Respondent.

Laurack D. Bray, representing himself, sued his sister, Dianne Jackson, for abuse of process. The trial court granted Jackson's motion for judgment on the pleadings without leave to amend. On appeal Bray argues the judgment in Jackson's favor must be reversed because the trial court improperly rejected his requests to enter Jackson's default after her answer was struck; his complaint alleged facts sufficient to state a cause of action for abuse of process; in ruling on Jackson's motion the trial court improperly considered matters outside the pleadings; and the court should have at least granted him leave to amend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Prior Unlawful Detainer Proceedings

Bray previously resided in a home owned by Jackson and Bray's mother, Helen Davis. In October 2015, as Davis aged and moved to a residential care facility, Jackson became her conservator in probate court proceedings that Bray contested.¹

Jackson filed unlawful detainer proceedings in 2017, seeking to evict Bray from the home. Her complaint, which alleged Bray paid no rent, sought only possession of the property.² Bray's answer alleged Jackson did not have the legal

¹ The order appointing Jackson as Davis's conservator granted Jackson authority to manage Davis's property. We affirmed the probate court's order on appeal. (*Bray v. Jackson* (Apr. 19, 2016, B265052) [nonpub. opn.]; see also *Bray v. Jackson* (Mar. 25, 2019, B290858) [nonpub. opn.] [affirming probate court order authorizing Jackson to sell the property].)

² Jackson's unlawful detainer complaint did not seek, and the court did not award, any past due rent. Jackson did request, but did not receive, rent for the period Bray remained in

capacity to bring the action. After contested proceedings, the unlawful detainer court on July 6, 2017 determined Jackson had the authority to seek Bray's eviction and awarded possession of the property to Jackson. Bray then sought a restraining order to prevent his eviction, arguing again Jackson had no authority to proceed. The trial court denied relief.

On appeal to the Appellate Division of the Los Angeles Superior Court, Bray argued, in part, the unlawful detainer proceedings had been brought for an improper purpose—to force him to pay rent—and Jackson had no authority to seek his eviction in any event. Jackson responded her intent was to recover possession of the property, an entirely proper use of unlawful detainer proceedings, and she had legal authority to do so. The Appellate Division agreed with Jackson and affirmed the judgment, holding Jackson was authorized to file the unlawful detainer action and had a proper purpose in seeking Bray's eviction. (*Jackson v. Bray* (Aug. 23, 2018, BV032425) [nonpub. opn.])³ That judgment is final.

possession of the property after expiration of the 60-day notice to quit.

³ The Appellate Division explained, “The trial court took judicial notice that plaintiff was appointed conservator of Davis, and the court found that plaintiff had the right to evict defendant based on the conservatorship. On an appeal that proceeds on the clerk’s transcript, we must presume that the court found this action was brought for the benefit of Davis and her estate.”

2. The Abuse-of-process Action

Bray's abuse-of-process complaint, filed in September 2017, alleged Jackson had pursued the unlawful detainer action with an improper motive and without legal authority, resulting in his unlawful eviction from their mother's home. Jackson filed an answer on November 20, 2017. The court subsequently struck the answer for failure to pay a filing fee after it had denied Jackson's request for a fee waiver. Jackson refiled her answer on December 28, 2017.

Bray, who had unsuccessfully attempted to have Jackson's default entered, moved to strike the new answer on the ground the court should have entered Jackson's default. The trial court denied the motion.

Jackson then moved for judgment on the pleadings, arguing Bray's complaint failed to state a cause of action for abuse of process and, in any event, his claim was barred by the rulings in the unlawful detainer proceeding. In support of her motion Jackson filed a request for judicial notice that included the pleadings in the unlawful detainer action, the briefs on appeal and the Appellate Division's opinion affirming the judgment in her favor. After the trial court granted the request for judicial notice, it granted the motion for judgment on the pleadings without leave to amend and entered judgment in Jackson's favor.

DISCUSSION

1. The Trial Court Did Not Err in Granting the Motion

a. Governing law and standard of review

"The common law tort of abuse of process arises when one uses the court's process for a purpose other than that for which the process was designed. . . . [¶] '[T]he essence of the tort [is] . . . misuse of the power of the court; it is an act done in the name

of the court and under its authority for the purpose of perpetrating an injustice.’ [Citation.] To succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056-1057.) “[W]hile a defendant’s act of improperly instituting or maintaining an action may, in an appropriate case, give rise to a cause of action for malicious prosecution, the mere filing or maintenance of a lawsuit—even for an improper purpose—is not a proper basis for an abuse of process action.” (*Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1169; accord, *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1523.)

“A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. [Citation.] A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.’ [Citation.] ‘All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law’ [Citation.] Courts may consider judicially noticeable matters in the motion as well.” (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 777.)

b. *The complaint fails to state facts sufficient to constitute a cause of action for abuse of process*

Here, Bray alleged Jackson misused the unlawful detainer process “for the purpose of forcing or coercing [Bray] to pay rent that she wish[es] to use for her own purposes,” even though Davis

had never demanded rent from Bray while he lived in her house. According to Bray, Jackson “intended her actions to coerce [Bray] into paying her money, under the banner of the conservatorship, by the use of the unlawful detainer process as a club.” Jackson’s purportedly improper acts in the use of the process were filing and maintaining the unlawful detainer action and then seeking a writ of possession to evict Bray when he refused to pay rent.

As discussed, however, Jackson’s unlawful detainer action did not seek unpaid rent for the period Bray occupied their mother’s house prior to expiration of the 60-day notice period in Jackson’s notice to quit. Moreover, even if Jackson had used the action in an effort to pressure Bray to begin rent payments, filing and maintaining a lawsuit to coerce an undeserved monetary settlement is not a proper basis for an action for abuse of process: “[C]ontinued pursuit of meritless litigation for an improper collateral purpose, although actionable under malicious prosecution principles, is not separately actionable under an abuse of process theory.” (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 521; accord, *S.A. v. Maiden* (2014) 229 Cal.App.4th 27, 42; see *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.*, *supra*, 42 Cal.3d at p. 1169; *JSJ Limited Partnership v. Mehrban*, *supra*, 205 Cal.App.4th at p. 1523.)

Bray attempts to avoid this well-established principle of California law by asserting his claim does not rest on Jackson’s filing of the unlawful detainer action but on her efforts to force him “to pay rent when he was not required to do so, and retaliating by unlawfully evicting him when he refused to do so.” Citing *Tranchina v. Arcinas* (1947) 78 Cal.App.2d 522 (*Tranchina*), a case in which a landlord misused a writ of

possession to evict a tenant in violation of wartime emergency regulations, Bray argues his complaint adequately alleges misuse of an otherwise proper process.

Bray's reliance on *Tranchina* is misplaced. There the landlord obtained a certificate from the federal Office of Price Administration, which was necessary to remove a tenant, by representing he intended to occupy the premises for his own use. The landlord then brought an action against the tenants in unlawful detainer and obtained a writ of possession under which the tenant surrendered the rented premises. In the action brought against the landlord for abuse of process, the court found, although the writ was regularly issued, the landlord had abused it by using it in bad faith, rerenting the premises after the tenants left. The *Tranchina* court explained, "[D]efendants were prohibited by law in this case from evicting plaintiffs for any other purpose than that authorized, i.e. 'solely for the purpose of occupancy by Antonia Arcinas, purchaser.' When, as found by the trial court, defendants willfully used the writ of possession to effectuate another purpose than that authorized by law such use constituted a perversion of the writ from its lawful purpose and amounted to an abuse of process." (*Tranchina, supra*, 78 Cal.App.2d at p. 526.)

Here, in contrast, Bray failed to allege Jackson had used the writ of possession to evict him in violation of some law or regulation. In fact, recovery of possession of property, the relief Jackson sought and obtained in the unlawful detainer proceedings, is the primary, and wholly legitimate, purpose of an unlawful detainer proceeding. (*Castle Park No. 5 v. Katherine* (1979) 91 Cal.App.3d Supp. 6, 9-10 [primary purpose of unlawful detainer is recovery of possession; recovery of unpaid rent is

secondary] citing *Markham v. Fralick* (1934) 2 Cal.2d 221, 227; see also *Green v. Superior Court* (1974) 10 Cal.3d 616, 634 [ultimate question in unlawful detainer is possession].)

Bray's complaint and the material properly before the trial court demonstrated the unlawful detainer action served the primary purpose for which it was intended: the recovery of possession of the property. The trial court did not err in granting Jackson's motion.

2. The Trial Court Properly Considered Matters Judicially Noticed

Contrary to Bray's contention that neither the trial court nor this court may properly consider matters judicially noticed, including the records in Jackson's unlawful detainer action, to decide whether he stated facts sufficient to constitute a cause of action for abuse of process, both Code of Civil Procedure section 438, subdivision (d), and governing Supreme Court authority expressly permit consideration of matters of which the court may take judicial notice in deciding a motion for judgment on the pleadings. (See, e.g., *People ex rel. Harris v. Pac Anchor Transportation, Inc.*, *supra*, 59 Cal.4th at p. 777.)

3. The Issue of Jackson's Default Is Moot

Bray sought to obtain Jackson's default several times before the trial court granted Jackson's motion for judgment on the pleadings. Bray contends the trial court abused its discretion in denying his requests and argues on appeal the court had a duty to enter the default and its failure to do so constitutes grounds for reversal of the judgment. Although Bray explains why he believes Jackson's default should have been entered, he cites no legal authority to support his analysis of the proper treatment of the premature filing of a request for entry of default.

(See generally *People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363 [where party fails to provide legal argument and citation to authority, reviewing court may treat issue as forfeited]; *In re Phoenix H.* (2009) 47 Cal.4th 835, 845 [argument not supported by citation of authority deemed abandoned]; *In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 227 [same].)

Even if Bray's argument were properly before us, however, any error by the trial court was necessarily harmless. (See Code Civ. Proc., § 475 ["No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also . . . that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown"].) Because Bray failed to state facts sufficient to constitute a cause of action for abuse of process, even had the trial court entered Jackson's default, no default judgment in Bray's favor could have been entered: "Generally, a defendant in default 'confesses the material allegations of the complaint. [Citation.]' [Citation.] Nonetheless, the trial court may not enter a default judgment when the complaint's allegations do not state a cause of action. [Citations.] No judgment can rest on such a complaint, as a defendant in default "'admits only facts that are well pleaded.'" (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 392.)

4. *The Court Properly Denied Leave To Amend*

Finally, Bray argues the trial court erred in failing to allow him leave to amend his complaint, asserting he could be more

specific in his description of Jackson's improper use of unlawful detainer processes. However, Bray has failed to carry his burden to describe in his briefing any additional facts he could allege or to demonstrate how any proposed amendment would change the legal effect of the pleading. (*Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 618; *Mercury Ins. Co. v. Pearson* (2008) 169 Cal.App.4th 1064, 1072.)

DISPOSITION

The judgment is affirmed. Jackson is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.